

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
DOCKET NO. 3:17-cv-00643-FDW-DCK

ERIC KINSINGER and  
DENISE KINSINGER,

Plaintiffs,

vs.

SMARTCORE, LLC;  
SMARTCORE ELECTRIC, LLC;  
SMARTCORE ELECTRICAL SERVICES;  
SMARTCORE, LLC GROUP HEALTH,  
BENEFIT PLAN; STEVEN MATTHEW  
GOOD and WILLIAM H. WINN JR.,

Defendants.

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JUDGMENT

Following a bench trial held on June 4, 2019 before the undersigned, the Court enters its Judgment in this case as follows:

**Count I:**

1. Judgment is entered in favor of Plaintiff Eric Kinsinger on Count I of the Amended Complaint, (Doc. No. 33), for wages in the amount of \$6,250. This judgment is doubled under N.C. Gen. Stat. §95-25.22 to \$12,500.
2. Plaintiff Eric Kinsinger is entitled to pre-judgment interest under N.C. Gen. Stat. § 95-25.22(d) at the North Carolina interest rate specified in N.C. Gen. Stat. § 24-1 of eight percent. Interest will accrue separately for each paycheck during the period of nonpayment from the date each paycheck would have been paid. See N.C. Gen. Stat. §95-25.22(a).
3. Plaintiff Eric Kinsinger is entitled to post-judgment interest under North Carolina law.

4. This judgment for Plaintiff Eric Kinsinger on Count I is imposed jointly and severally against all Defendants.

**Count II:**

5. Judgment is entered in favor of Plaintiff Eric Kinsinger on Count II of the Amended Complaint for breach of contract. However, because this claim was plead in the alternative to Count I, the Court finds that this claim is moot.

**Count III:**

6. Judgment is entered in favor of Plaintiffs on Count III of the Amended Complaint, in accordance with the terms of the consent judgment signed by all parties on June 4, 2019. (Doc. No. 116).

7. All Defendants are jointly and severally liable to Plaintiffs for prejudgment interest on this claim at a rate of eight percent, with pre-judgment interest accruing from February 17, 2016 through the date of the Consent Judgment, June 4, 2019

**Count IV:**

8. Judgment is entered in favor of Plaintiffs, on behalf of the Plan, on Count IV of the Amended Complaint for breach of fiduciary duty under 29 U.S.C. § 1132(a)(2). Defendants SmartCore, Good, and Winn are jointly and severally liable to Plan participants for breach of fiduciary duty.

9. Defendants SmartCore, Good, and Winn are hereby ordered to make restitution to Plan participants and/or beneficiaries in accordance with the Consent Judgment and Order entered in the related action, Acosta v. Good, et al, 3:19-cv-119-FDW-DCK, Doc. No. 22 (W.D.N.C. Filed Aug. 19, 2019).

**Count V:**

10. Count V of Plaintiffs' Amended Complaint, seeking other appropriate equitable relief under 29 U.S.C. § 1132(a)(3), is rendered moot in light of the Court's judgment in favor of Plaintiffs under Counts III and IV.

**Count VI:**

11. Judgment is entered in favor of Plaintiffs on Count VI of their Amended Complaint for statutory damages under 29 U.S.C. §§1024 and 1132(c). As a penalty, the Court awards \$55 per day for the documents that Defendants Good and Winn failed to produce to Plaintiffs for 748 days. The total penalty awarded under 29 U.S.C. §§1024 and 1132(c) is \$41,140.

12. Defendants Good and Winn, as plan administrators at the time of Plaintiffs' request, are jointly and severally liable to Plaintiffs for this amount.

**Count VII:**<sup>1</sup>

13. Plaintiffs' are entitled to recover reasonable attorneys' fees and costs under 29 U.S.C. §1132(g) for their ERISA claims.

14. Plaintiff Eric Kinsinger is entitled to recover reasonable attorney's fees and costs from his North Carolina Wage and Hour Act claims pursuant to N.C. Gen. Stat. § 95-25.22.

15. All Defendants are jointly and severally liable to Plaintiffs for these attorneys' fees.


16. Plaintiffs are entitled to post judgment interest at the applicable federal rate for all judgments arising from Plaintiffs' ERISA claims entered above.

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<sup>1</sup> For the purposes of efficient organization, the Court has moved some of the other requested relief (i.e. prejudgment interest for wages) under this Count to coincide with their respective claims.

IT IS SO ORDERED.

Signed: August 26, 2019

  
Frank D. Whitney  
Chief United States District Judge

